

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:07CV303-3-MU

RALPH FRANKLIN FREDRICK,                     )  
   )  
                  Petitioner,                     )  
   )  
                  v.                                 )  
   )  
NORTH CAROLINA DEPARTMENT                )  
OF CORRECTIONS,                             )  
   )  
                  Respondent.                    )  
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**ORDER**

**THIS MATTER** is before the Court upon Petitioner’s Petition for a Writ of Habeas Corpus, filed September 13, 2007. For the reasons stated herein, the Petitioner’s Petition for Writ of Habeas Corpus will be dismissed.

In reviewing the record, the Court notes that Petitioner filed a previous Petition for Writ of Habeas Corpus (case number 1:04cv20-1-MU) which was dismissed by this Court on October 28, 2005. “Before a second or successive application [for habeas corpus] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244 (b)(3)(A). Thus, this Court may not consider the merits of Petitioner’s claims because he failed to first certify his motion with the Fourth Circuit Court of Appeals before filing it in the District Court.<sup>1</sup>

**THEREFORE, IT IS HEREBY ORDERED** that Petitioner’s Petition for a Writ of

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<sup>1</sup> The Court notes that as indicated on his Petition, in response to question 14, on July 20, 2007 Petitioner filed a “second habeas corpus petition to challenge the issue of jurisdiction ‘only’” in the Fourth Circuit Court of Appeals. (Petition at 13.) On August 16, 2007, his application was denied.

Habeas Corpus is **DISMISSED** without prejudice.

**SO ORDERED.**

Signed: October 9, 2007

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

